

TITLE 7
HEALTH AND ENVIRONMENT

ORDINANCE
2007-5-4-25

ARTICLE 16
**BED AND BREAKFAST ESTABLISHMENT, RETAIL
FOOD ESTABLISHMENT, AND TEMPORARY
FOOD ESTABLISHMENT ORDINANCE**

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Preface

The purpose of this Ordinance is to safeguard public health and ensure that foods provided to consumers are safe, wholesome, and sanitary, regulated products are unadulterated and honestly presented, and, these products are in compliance with state laws and regulations. This Ordinance is designed to provide a comprehensive approach to protecting the consumer from contaminated food and foodborne illness.

This Ordinance establishes definitions, sets standards for management and personnel, food operations, and equipment and facilities, and provides for Bed and Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment plan reviews, permits, inspections, and employee restrictions. This Ordinance also prohibits sale of adulterated, unwholesome, or misbranded food, regulates inspection of such establishments, provides for compliance and the enforcement of this Ordinance, provides penalties for violations of said ordinance, and incorporates by reference Indiana Code, IC 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of Health Rules, 410 IAC 7-15.5 "Bed and Breakfast Establishments", 410 IAC 7-24 "Retail Food Establishment Sanitation Requirements", 410 IAC 7-21 "Wholesale Food Establishment Sanitation Requirements", 410 IAC 7-22 "Certification of Food Handlers", and 410 IAC 7-23 "Food Establishment: Schedule of Civil Penalties for Violations". This Ordinance further incorporates any updates, amendments, or revisions that may occur from time-to-time, and any bulletin or publication which may hereafter be published by the Indiana State Department of Health as a supplement or successor to Indiana State Department of Health Rules listed herein.

The Henry County Health Department is authorized herein to issue Bed and Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment Permits, collect Plan Review Fees, Permit Fees, and penalties, perform inspections, conduct investigations, hold hearings, order or otherwise compel correction of violations of this Ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this Ordinance.

Be it ordained by the Board of Commissioners of Henry County, State of Indiana, that:

Chapter 1: Definitions

7-16-1-1

"acidified food" means low-acid foods to which acid or acid food is added.

1. The term includes, but is not limited to:

- a. beans;
- b. cucumbers;
- c. cabbage;
- d. artichokes;
- e. cauliflower;
- f. puddings;
- g. peppers;
- h. tropical fruits; and
- i. fish;

singly or in any combination. These foods have an a_w greater than eighty-five hundredths (0.85), a finished equilibrium pH of four and six tenths (4.6) or below, and may be called pickled, such as "pickled cauliflower".

2. The term does not include:

- a. carbonated beverages;

- b. jams;
- c. jellies;
- d. preserves; and
- e. acid foods;

including such foods as standard and nonstandard food dressings and condiment sauces, that contain small amounts of low-acid food and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration.

7-16-1-2

“ a_w ” means water activity that is as follows:

- 1. a measure of the free moisture in a food;
- 2. the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature;
- 3. indicated by the symbol a_w .

7-16-1-3

“Adulterated” has the meaning set forth in IC 16-42-1 through IC 16-42-4.

7-16-1-4

“Bed and Breakfast Establishment” as defined in 410 IAC7-15.5 means an operator occupied residence that:

- 1. provides sleeping accommodations to the public for a fee;
- 2. has no more than fourteen (14) guest rooms;
- 3. provides breakfast to its guests as part of the fee; and
- 4. provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

7-16-1-5

“Catering” means the preparation of food in an approved retail food establishment and may include the transportation of such food for service and consumption at some other site.

7-16-1-6

“Commissary” means a registered catering establishment, restaurant, or any retail food establishment in which food, food containers, or food supplies are:

- 1. kept;
- 2. handled;
- 3. prepared;
- 4. packaged; or
- 5. stored;

from which meals are catered and mobile retail food establishments or pushcarts are serviced.

7-16-1-7

“Conflict of Interest” means a situation in which the private financial interest of a Henry County Official, Henry County Official’s spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Henry County Official’s judgment in the performance of a public duty.

7-16-1-8

“Consumer” means a person who is a member of the public who:

- 1. takes possession of food;
- 2. is not functioning in the capacity of an operator of a retail food establishment or food processing plant; and
- 3. does not offer the food for resale.

7-16-1-9

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

7-16-1-10

"Employee" means any of the following:

1. the person-in-charge;
2. the person having supervisory or management duties;
3. the person on the payroll;
4. a family member;
5. a volunteer;
6. a person performing work under contractual agreement; or
7. any other person working in a retail food establishment.

7-16-1-11

"Food" means the following:

1. articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound;
2. substances or ingredients used in the preparation of the items described in subsection (1) of this section.

7-16-1-12

"Foodborne disease outbreak" means an incident, except as specified under subsection (2), in which:

1. there is an occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food; and
2. epidemiological analysis implicates the food as the source of the illness.

7-16-1-13

"Henry County Health Department" means the local health department in Henry County or authorized representative having jurisdiction over a Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment.

7-16-1-14

"Henry County Official" means any Official of Henry County, Indiana.

7-16-1-15

"Hazard Analysis Critical Control Point" or "HACCP" as defined in 410 IAC 7-24 means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

7-16-1-16

"Health Officer" means the individual duly appointed as Health Officer of Henry County, Indiana, by the Henry County Board of Health, or his/her authorized representative.

7-16-1-17

"Hearing Officer" means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Henry County Health Department.

7-16-1-18

"Imminent Health Hazard" means any circumstance or situation which in the opinion of the Health Officer presents a serious health risk to the public.

7-16-1-19

"Inspection Report" means the document prepared by the Henry County Health Department that is completed at the time of the inspection and a copy left with the operator.

7-16-1-20

"Operator" means the person who has a primary oversight responsibility for operation of the establishment through ownership, or lease or contractual agreement, and who is responsible for the storage, preparation, display, transportation or serving of food to the public.

7-16-1-21

"Order" as derived from IC 4-21.5-1-9 means a Henry County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interest of one (1) or more specific persons. The term includes a Permit.

7-16-1-22

"Permit" means the document issued by the Henry County Health Department that authorizes a person to operate a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment.

7-16-1-23

"Person" means an association; a corporation; an individual; partnership; or other legal entity, government, or governmental subdivision or agency.

7-16-1-24

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero (0) and seven (7) indicate acidity, and values between seven (7) and fourteen (14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral.

7-16-1-25

"Potentially Hazardous Food" means:

1. food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:
 - a. the rapid and progressive growth of infectious or toxigenic microorganisms;
 - b. the growth and toxin production of *Clostridium Botulinum*; or
 - c. in raw shell eggs, the growth of *Salmonella Enteritidis*.
2. The term includes the following:
 - a. a food of animal origin that is raw or heat treated;
 - b. a food of plant origin that is heat-treated or consists of raw seed sprouts;
 - c. cut melons; and
 - d. garlic-in-oil mixtures that are not modified in a way that result in mixtures that do not support growth as specified under subsection (1).
3. The term does not include any of the following:
 - a. an air-cooled hard-boiled egg with shell intact;
 - b. a food with a a_w value of eighty-five hundredths (0.85) or less;
 - c. a food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;
 - d. a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
 - e. a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *Salmonella Enteritidis* in eggs or *Clostridium Botulinum* cannot occur, such as a food that:
 - i. has a a_w and a pH that are above the levels specified under subdivisions (b) and (c); and

- ii. may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; and
- f. a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under subsection (1).

7-16-1-26

“Retail Food Establishment” means:

1. an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as the following:
 - a. a restaurant;
 - b. a satellite or catered feeding location;
 - c. a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;
 - d. a market;
 - e. a grocery store;
 - f. a convenience store;
 - g. a vending location;
 - h. a conveyance used to transport people;
 - i. an institution;
 - j. a food bank;
 - k. a commissary;
 - l. a cottage industry;
 - m. a hospice facility as defined in IC 16-25-1.1-3;
 - n. a health care facility as defined in IC 16-18-2-161;
 - o. a health facility as defined in IC 16-18-2-167;
 - p. a child care facility such as the following:
 - i. licensed child care centers licensed under 470 IAC 3-4.7;
 - ii. licensed child care institutions licensed under 465 IAC 2-9, 465 IAC 2-10, and 465 IAC 2-11;
 - iii. registered child care ministries registered under 470 IAC 3-4.5;
2. an operation that relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or a delivery service that is provided by common carriers;
3. an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and
4. an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises and regardless of whether there is a charge for the food.
5. The term does not include the following:
 - a. an establishment that offers only prepackaged foods that are not potentially hazardous;
 - b. a produce stand that offers only whole, uncut fresh fruits and vegetables;
 - c. a food processing plant operated under IC 16-42-5;
 - d. a private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4;
 - e. an area where food that is prepared as specified in subsection (4) is sold or offered for human consumption;
 - f. a bed and breakfast establishment as defined and regulated under IC 16-41-31 and 410 IAC 7-15.5;
 - g. a private home that receives catered or home-delivered food; or
 - h. a private home.

7-16-1-27

"Temporary Food Establishment" as defined in 410 IAC 7-24 means a Retail Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration with the approval of the organizers of the event or celebration.

Chapter 2: Permits

7-16-2-1: Requirement

It is unlawful for a person to operate any Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment in Henry County without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment.

7-16-2-2: Compliance

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and/or 410 IAC 7-24 will be entitled to obtain and keep a Permit.

7-16-2-3: Non-Transferable

A Permit issued under this Ordinance is not transferable to any other person or to any other location.

7-16-2-4: Registration

A Bed and Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment permitted by the Henry County Health Department shall be considered registered as required in IC 16-42-1-6. To allow verification that a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment which is seeking to obtain a new Permit is constructed, equipped, and otherwise meets requirements of this Ordinance, the Henry County Health Department shall be notified of an intent to operate at least thirty (30) days prior to registering.

7-16-2-5: Application Required

A person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment shall submit to the Henry County Health Department a written application for a Permit on a form provided by the Henry County Health Department.

7-16-2-6: Content of the Application

The application shall include:

1. the name, mailing address, telephone number, and original signature of the person and/or operator applying for the Permit and the name, mailing address, telephone number, and location of the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment;
2. the name and title of the operator directly responsible for the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment;
3. information specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;
4. a statement signed by the applicant that:
 - a. attests to the accuracy of the information provided in the application, and
 - b. affirms that the operator will:
 - i. comply with this ordinance; and
 - ii. allow the Henry County Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;

5. a statement specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment:
 - a. if not permanent, is mobile and/or temporary, and the operation can be categorized by one (1) or more of the following:
 - i. prepares, offers for sale, or serves potentially hazardous food only to order upon a consumer's request, in advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or using time, rather than temperature, as the public health control as specified under 410 IAC 7-24;
 - ii. prepares acidified foods;
 - iii. prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients, cooking, cooling, reheating, hot or cold holding, freezing, or thawing;
 - iv. prepares food for delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment or Retail Food Establishment where it is prepared;
 - v. prepares food for service to a highly susceptible population, as defined in 410 IAC 7-24;
 - vi. prepares only food that is not potentially hazardous; or
 - vii. does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;
6. other information required by the Henry County Health Department.

7-16-2-7: Qualification

To qualify for a Permit, an applicant must:

1. be an owner and/or operator of the Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment;
2. comply with the requirements of this Ordinance;
3. agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment and provide required information; and
4. pay the applicable Permit Fees at the time the application is submitted.

7-16-2-8: Permit Period for Permanent Establishments

A Permit for each Bed and Breakfast Establishment or Retail Food Establishment having permanent location in Henry County shall be issued for a term of one year beginning January 1st, and expiring December 31st, of the same calendar year and shall be renewed annually.

7-16-2-9: Permit Period for Temporary Establishments

A Permit for a Temporary Food Establishment shall be for the term of one (1) continuous operation, not to exceed fourteen (14) consecutive days.

7-16-2-10: Contents

Any Permit issued by the Health Officer shall contain:

1. the name and address of the person and/or the owner to whom the Permit is granted;
2. the location of the establishment for which the Permit is issued;
3. the issuance and expiration dates; and
4. other such pertinent data as may be required by the Henry County Health Officer.

7-16-2-11: Change of Ownership

The Henry County Health Department may renew a Permit for an existing Bed and Breakfast Establishment or Retail Food Establishment or may issue a Permit to a new owner of an existing Bed and Breakfast Establishment or Retail Food Establishment after:

1. a properly completed application is submitted, reviewed and approved;
2. the fees are paid; and
3. an inspection shows the establishment is in compliance with this Ordinance.

7-16-2-12: Responsibilities of the Operator

Upon acceptance of the Permit issued by the Henry County Health Department, the operator, in order to retain the Permit, shall:

1. post the Permit in a location in the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment that is conspicuous to consumers;
2. comply with the provisions of this Ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;
3. immediately discontinue affected operations and notify the Henry County Health Department if an imminent health hazard may exist;
4. allow representatives of the Henry County Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment at all reasonable times;
5. comply with directives of the Henry County Health Department including time frames for corrective actions specified in Inspection Reports, notices, orders, warnings, and other directives issued by the Henry County Health Department in regard to the operator's Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment or in response to community emergencies;
6. accept notices issued and served by the Henry County Health Department; and
7. be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Ordinance or a directive of the Henry County Health Department.

7-16-2-13: Requirement for Facility and Operating Plans Submission and Review

1. The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment shall submit to the Henry County Health Department properly prepared plans and specifications for review and approval before:
 - a. the construction of a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment;
 - b. the conversion of an existing structure for use as a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment; or
 - c. the remodeling of a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment;
 - d. a change in the type of Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment if the Henry County Health Department determines that plans and specifications are necessary to ensure compliance with this Section.
2. The plans and specifications for a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment shall include:
 - a. the type of operation;
 - b. the types of food preparation; and
 - c. identification of the foods to be prepared.
3. The plans and specifications must be deemed satisfactory and approved by the Henry County Health Department before a Permit can be issued.
4. A pre-operational inspection must show that the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Ordinance and all applicable requirements in 410 IAC 7-24 and/or 410 IAC 7-15.5.
5. In addition to the annual Permit Fee required in Chapter 3 of this Ordinance, every Bed and Breakfast Establishment and Retail Food Establishment required to submit plans and specifications to the Health Department in subsection (1) above shall pay a Plan Review Fee equivalent to the annual Permit Fee for the Bed and Breakfast Establishment or Retail Food Establishment which has not previously obtained a Permit.

Chapter 3: Permit Fees

7-16-3-1: General

It shall be unlawful for any person to operate a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment in Henry County who has not paid the Permit Fee required to be paid for the operation of such establishment. Except as provided for in Sections (6) through (10) of this Chapter, the Permit Fee shall be paid for a term of one year beginning January 1st and expiring December 31st of the same year, and shall be renewed annually.

7-16-3-2: Fee Establishment

Permit Fees for the issuance of a Permit under this Ordinance to a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment shall be set by the Henry County Health Department, as provided for in IC 16-20-1-27.

7-16-3-3: Receipt for Payment

A receipt for the payment of such fee shall be provided by the Henry County Health Department if a valid Permit from the Health Officer is presented.

7-16-3-4: Requirement for Fee

The payment of such fees shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment, operated or to be operated by any person.

7-16-3-5: Based On Number of Employees

Permit Fees based on number of employees are as follows:

1. less than twenty (20) employees as seventy-five dollars (\$75.00) per calendar year;
2. twenty (20) through forty-nine (49) employees as one hundred dollars (\$100.00) per calendar year;
3. more than forty-nine (49) employees as one hundred and fifty dollars (\$150.00) per calendar year.

7-16-3-6: New Establishments Operating Less Than a Year

The Permit Fee for a new establishment having permanent location in Henry County and filing its Application between June 1st and December 31st of any year thereby operating less than six (6) months during any one (1) calendar year shall be one-half (1/2) of the scheduled Permit Fee for that establishment.

7-16-3-7: Temporary Establishments

Any person who desires to operate a Temporary Food Establishment in Henry County shall obtain from the Henry County Health Department a Temporary Food Establishment Permit. The Henry County Health Department shall provide such Permit upon inspection and approval of said Establishment and when presented with ten dollars (\$10.00) for each day of operation, not to exceed one hundred and forty dollars (\$140.00) for any continuous operation.

7-16-3-8: Seasonal Establishments

Retail Food Establishments which operate less than ten (10) months during any one calendar year will be charged one-half (1/2) of the scheduled fee.

7-16-3-9: Addition to Fees for Late Renewal

Every person operating a Bed and Breakfast Establishment or Retail Food Establishment shall pay annually to the Henry County Health Department a Permit Fee for Permit renewal in accordance with the schedule of fees aforementioned in Section (5) of this Chapter between January 1st and February 1st of each year. If said Permit Fee is not paid on or before February 1st of the calendar year, the Permit shall be *ipso facto* void. A twenty-five percent (25%) Late Fee shall be assessed to Permits renewed late after February 1st.

7-16-3-10: Exemptions

An organization that is exempt from the Indiana State Gross Retail and Use Taxes under IC 6-2.5-5-26 and that offers food to the final consumer at an event held for the benefit of the organization shall be exempt from the requirements of this Ordinance if:

1. members of the organization prepare the food that will be offered;
2. events conducted by the organization under this Section take place for no more than thirty (30) days in any calendar year; and
3. the name of each member who has prepared a food item is attached to the container in which food has been placed.

The Health Officer shall be provided, upon request, proof of an organization's tax exemption.

7-16-3-11: Non-Refundable

The payment of Permit Fees under this Ordinance is non-transferable and non-refundable.

Chapter 4: Collection Accounting and Disposition

7-16-4-1: Collection of Fees

The Henry County Health Department shall collect such fees established as a part of this Ordinance in accord with the schedules designated in Chapters 2 and 3 aforementioned.

7-16-4-2: Accounting for Fees

All fees and penalties collected by the Henry County Health Department shall be accounted for in detail for each Plan Review Fee, Permit Fee, Late Fee, Civil Penalty, and/or other penalty.

7-16-4-3: Disposition of Fees

1. All fees collected by the Henry County Health Department under this Ordinance shall be transferred to the Henry County Health Maintenance Fund. The monies collected in accord with the provisions of this Ordinance shall be used only for the maintenance of or for future expansion of the specific program service from which they are derived.
2. All penalties collected by the Henry County Health Department under this Ordinance shall be transferred to the Henry County General Fund as provided for in IC 16-42-5-28.

Chapter 5: Inspections

7-16-5-1: Permanent Establishment Inspection Interval

The Henry County Health Department shall inspect each Bed and Breakfast Establishment and Retail Food Establishment having permanent location in Henry County at least once every year.

7-16-5-2: Inspection Interval

The Henry County Health Department may increase the interval between inspections if:

1. the Bed and Breakfast Establishment and/or Retail Food Establishment is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan;
2. the Bed and Breakfast Establishment and/or Retail Food Establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction of the Henry County Health Department; or
3. the Henry County Health Department is able to contact the establishment operator to determine that the nature of the food operation has not changed.

7-16-5-3: Temporary Establishments

The Henry County Health Department shall periodically inspect throughout the Permit period a Temporary Food Establishment that prepares, sells, or serves unpackaged potentially hazardous

food. The Henry County Health Department may inspect a Temporary Food Establishment that prepares, sells or serves unpackaged, non-potentially hazardous food that:

1. has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
2. has untrained food employees.

7-16-5-4: Performance and Risk Based Inspections

Within the parameters specified in this Chapter, the Henry County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment's and/or Retail Food Establishment's history of compliance with this Ordinance and the Bed and Breakfast Establishment's and/or Retail Food Establishment's potential as a vector of foodborne infectious or toxigenic microorganisms by evaluating:

1. past performance regarding violations of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;
2. the occurrence of numerous or repeat violations of 410 IAC 7-15.5 and/or 410 IAC 7-24 and/or HACCP plan requirements that are non-critical;
3. past performance when complaints investigated and found to be valid;
4. the hazards associated with the particular foods that are prepared, stored or served;
5. the type of operation including the methods and extent of food storage, preparation and service;
6. the number of people served; and
7. whether the population served is a highly susceptible population.

7-16-5-5: Access Allowed at Reasonable Times after Due Notice

After a Henry County Health Department Official presents their credentials and provides notice of the purpose and of the intent to conduct an inspection, the operator shall allow the Henry County Health Department to determine if the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment is in compliance with this Ordinance by allowing access to the establishment, allowing inspection, and providing information and records as requested. The Henry County Health Department is entitled to information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment hours of operation and other reasonable times.

7-16-5-6: Recourse for Denied Access

Access is a condition of the acceptance and retention of a Permit. If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law as provided in IC 16-20-1-26.

7-16-5-7: Inspection Reports

At the conclusion of the inspection, the Henry County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the operator or to the person-in-charge as required under IC 16-20-8-5.

7-16-5-8: Timely Correction of Critical Violations

Except as specified in Section (9) of this Chapter, an operator shall, at the time of inspection, correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22, and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

7-16-5-9: Time Frame for Corrective Action

Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Henry County Health Department may agree to or specify a longer time frame after the inspection for the operator to correct critical code violations or HACCP plan deviations.

7-16-5-10: Verification of Corrective Action

After receiving notification that the operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the Henry County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Henry County Health Department's records.

7-16-5-11: Refusal to Sign Acknowledgment

Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted in the Inspection Report within the time frames specified.

7-16-5-12: Refusal to Sign Noted

A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the Henry County Health Department's historical record for the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment.

7-16-5-13: Agreement

The operator is not necessarily in agreement with the findings of the Henry County Health Department by acknowledgment of receipt of the Inspection Report.

7-16-5-14: Public Information

Except as specified in Section (194) of 410 IAC 7-24, the Henry County Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a person who requests it as provided in IC 16-20-8-6.

Chapter 6: Compliance and Enforcement

7-16-6-1: Application Denial

If an application for plan review and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment is denied, the Henry County Health Department shall provide the applicant with a notice that includes:

1. the specified reasons and rule citations for the application and/or Permit denial;
2. the actions, if any, that the applicant must take to qualify for the plan review and/or Permit; and
3. advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

7-16-6-2: Permit Suspension

The Henry County Health Department may suspend the Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment if it determines through inspections, or examination of employees, food, records or other means as specified in this Ordinance, that an imminent health hazard exists.

7-16-6-3: Ceasing Operation and Contacting the Henry County Health Department

The operator of a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment shall immediately discontinue operations and notify the Henry County Health Department that an imminent health hazard may exist because of an emergency such as:

1. fire;
2. flood;
3. extended interruption of electrical or water service;
4. sewage backup;
5. misuse of poisonous or toxic materials;
6. onset of an apparent foodborne illness outbreak;
7. gross insanitary occurrence or condition; or
8. other circumstances that may endanger public health.

7-16-6-4: Exempt Areas of Establishment

An operator need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

7-16-6-5: Resuming Operation

If a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment has discontinued operations for the reason(s) stated above or otherwise according to law, the operator must obtain approval from the Henry County Health Department before resuming operations.

7-16-6-6: Enforcement

The following options are available to the Henry County Health Department for enforcement when such actions are reasonable:

1. issuing of tickets based on violations of the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment as provided for in IC 16-42-5-28 ;
2. conduct administrative proceeding for suspension and/or revocation of the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment Permit in front of a Hearing Officer;
3. issuing an Order to Abate based on a condition that may transmit, generate, or promote disease. Failure on the part of the operator to comply with the order could result in the enforcement of the order in the court of jurisdiction by the initiation of an action by the County Attorney, County Prosecuting Attorney, or the Henry County Board of Health Attorney. (See IC 16-20-1-25);

Should the action concerning public health be a violation of the Ordinance, the County Attorney, the County Prosecuting Attorney, or the Henry County Board of Health Attorney may initiate a proceeding in the Courts for the enforcement of the Ordinance violation pursuant to the provisions of IC 34-28-5-1. Should the action concerning public health be a criminal offense, the County Attorney or the County Prosecuting Attorney may institute a proceeding in the Courts for enforcement pursuant to the provisions of IC 16-20-1-25.

Chapter 7: Appeals Section

7-16-7-1

Any Persons aggrieved by orders issued under Sections one (1) through three (3) in Chapter 5 of this Ordinance shall be entitled to a review of the final order before a Hearing Officer by filing a written request therefore with the Health Officer. The written request must be mailed to the Health Officer as: Henry County Health Department, ATTN: Health Officer, 1201 Race Street, Suite 208, New Castle, Indiana, 47362-4653 and, must be received with fifteen (15) days after such Final Order is issued.

7-16-7-2

Upon the Health Officer's receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of the Court of Henry County. A shorter period of time may be granted, if requested by either party and agreed upon among the parties.

7-16-7-3

The notice of the hearing shall be served upon the person requesting the review by leaving or mailing by certified mail the notice to the address listed on the Permit application as the person's mailing address or such other address, as the person shall designate in the letter of request to the Health Officer.

7-16-7-4

The Hearing Officer shall make written findings of fact and shall enter its Final Order or determination of this matter in writing.

Chapter 8: Conflict Of Interest

7-16-8-1

No Henry County Health Department Official shall conduct themselves in a manner that is or could have the appearance of a conflict of interest.

Chapter 9: Penalties

7-16-9-1

In addition to any Civil Penalty that may be imposed under 410 IAC 7-23, any person who recklessly violates or fails to comply with applicable requirements of this Ordinance shall be deemed guilty of a Class B Misdemeanor as provided in IC 35-50-3-3 and IC 16-42-5-27, and shall be imprisoned for a fixed term of not more than on hundred-eighty (180) days; in addition, they may be fined not more than on thousand dollars (\$1000.00).

Chapter 10: Enforcement Interpretation

7-16-10-1

The Health Officer may initiate any procedures as he/she deems necessary for proper enforcement in order to carry out the purpose and intent of this ordinance.

Chapter 11: Severability

7-16-11-1

The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance.

Chapter 12: Incorporated by Reference

7-16-12-1

The requirements of Indiana Code IC 16-42-1, IC 16-42-2, and IC 16-42-5, and Indiana State Department of Health Rules, 410 IAC 7-15.5 "Bed and Breakfast Establishments", 410 IAC 7-24 "Retail Food Establishment Sanitation Requirements", 410 IAC 7-21 "Wholesale Food Establishment Sanitation Requirements", 410 IAC 7-22 "Certification of Food Handlers", and 410 IAC 7-23 "Food Establishment: Schedule of Civil Penalties for Violations" are hereby incorporated by reference.

7-16-12-2

This Ordinance further incorporates any updates, amendments, or revisions that may occur from time-to-time, and any bulletin or publication which may hereafter be published by the Indiana State Department of Health as a supplement or successor to Indiana State Department of Health Rules listed herein.

Chapter 13: Repeal and Effective Date

7-16-13-1

All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, and this Ordinance shall be in full force and effect thirty (30) days after its adoption and publication as provided by law.

Ordinance 2007-5-4-25 passed and adopted by the Commissioners of Henry County, State of Indiana, on this 25th day of April, 2007.

Signed:

Phillip J. Estridge

Larry D. Hale

William Cronk

Henry County Board of Commissioners
New Castle, Indiana

Ordinance 2007-5-4-25 published on May 10, 2007 and May 16, 2007 in Henry County, Indiana.

Attested to:

Linda Ratcliff

Auditor, Henry County
New Castle, Indiana

